UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1996/118
12 March 1996

ENGLISH
Original: SPANISH
ENGLISH AND SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Items 3 and 17 of the provisional agenda

ORGANIZATION OF THE WORK OF THE SESSION

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Note verbale dated 7 March 1996 from the Permanent Mission of Colombia to the United Nations Centre for Human Rights

The Permanent Mission of Colombia to the United Nations Office at Geneva has the honour to request that the attached document should be distributed as an official document of the fifty-second session of the Commission on Human Rights.

The document relates to policies and measures for the promotion and protection of human rights in Colombia as a follow-up to the commitment made by the Government of Colombia at the fifty-first session of the Commission on Human Rights. It contains four annexes.*

Should it be necessary for the document to be submitted to the Commission under a specific item, the Mission of Colombia would like it to be under item 17 on "Advisory services in the field of human rights".

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* The four annexes are reproduced in the original language only in document E/CN.4/1996/118/Add.1.

POLICIES AND MEASURES FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN COLOMBIA

Follow-up to the commitment made by the Government of Colombia at the fifty-first session of the Commission on Human Rights

INTRODUCTION

The Government of Colombia wishes to inform the member Governments of the Commission on Human Rights, international agencies and non-governmental organizations concerned with human rights issues, particularly those dealing with the Colombian situation, of the measures, progress, achievements, obstacles and difficulties defining the current human rights situation in the country.

As stated on a number of occasions, the Government of Colombia is fully convinced that the human rights problem is a question not of images, but of realities. Guaranteeing full respect for all human rights has had high priority on its agenda.

The achievement of this objective is a basic aspect of efforts to bring about peace and civilized coexistence and a key element in strengthening justice and combating impunity.

In the light of these considerations, a frank and permanent dialogue on this question is of the utmost importance.

Human rights violations and the promotion, protection and defence of human rights in Colombia are unfortunately part of a long-standing and complex situation of violent confrontation heightened at present by activities linked to the drug traffic and by the strengthening of the warlike capacity of subversive armed groups.

The Government of Colombia recognizes the international community's legitimate concern and is grateful for the collaboration it has received from friendly Governments and international agencies which have taken part in some of its programmes by offering their experience and proposing initiatives. The President of Colombia and human rights organizations throughout the country have been fully receptive, have shared information and have welcomed the suggestions made with an open mind. The Government also welcomes the contribution of national and international non-governmental organizations, which have repeatedly been invited by the Government and have actively participated in the process.

The Government is aware that many other efforts must still be made, some in areas that give rise to hardened political debates within the different sectors of Colombian society. It is therefore important to analyse the country's situation thoroughly, not only in order to assess it, but also in order to take positive steps to improve it.

We hope to offer clear and succinct information on:

I. The commitment made by the Government of Colombia to the Commission on Human Rights

II. Government measures and achievements

III. Recommendations and comments on the reports of the thematic rapporteurs who visited Colombia

I. THE COMMITMENT MADE BY THE GOVERNMENT OF COLOMBIA TO THE COMMISSION ON HUMAN RIGHTS

The Government considered it appropriate to rely on the assistance that the thematic rapporteurs could provide during their visits to Colombia in order to promote and supplement its human rights policy.

To this end, it took the initiative of requesting rapporteurs who had already visited the country to make follow-up visits which would help speed up the implementation of their recommendations. The Government also invited other rapporteurs concerned with topics on which work is in progress in Colombia to schedule visits in the near future.

In addition to this programme of action, the Government proposed the establishment of a governmental commission to analyse and evaluate the rapporteurs' recommendations.

In accordance with this proposal, which took the form of a commitment made at the fifty-first session of the Commission on Human Rights, the Government:

1. Established the Follow-up Commission by means of Decree No. 1290 of 31 July 1995 (hereinafter referred to as Commission 1290). The text of the Decree is contained in annex 1. Its preambular paragraphs 6 and 7 read:

"6. Recommendations by international agencies on policies and measures to be adopted in the field of human rights should be thoroughly reviewed by public bodies with powers and responsibilities in this regard; such bodies should advocate the implementation of these recommendations and, in particular, the elements thereof that relate to the provisions of the Political Constitution, the legal rules in force and international treaties to which Colombia is a party;"

"7. It is the National Government's unswerving policy to promote, defend and protect the fundamental rights and freedoms of all Colombians. The main elements of this policy include that of respecting and ensuring respect for Colombia's international commitments in this field and opening up to monitoring by international human rights organizations."

The Decree states who the members of the Commission will be; assigns it functions, including the review of recommendations, the promotion of their implementation, the setting of deadlines, the provision of information to international bodies and discussions with NGOs. It also provides that the Commission will meet at least once a month.

So far, the Commission has met seven times. At its first meeting, it decided to invite NGOs to one of its meetings before the next Commission on Human Rights in order to inform them of the results achieved. (Copies of the minutes of the first meeting and a summary of subsequent ones are contained in annexes 2 and 5.)

2. The Government invited the following persons to make follow-up visits:

The Rapporteur on extrajudicial executions, Mr. B. Ndiaye;

The Rapporteur on torture, Mr. N. Rodley;

The Representative of the Secretary-General on internally displaced persons, Mr. F. Deng.

In view of the importance of the topics they are working on, the Government also invited:

The Rapporteur on the independence and impartiality of the judiciary, Mr. D.P. Cumaraswamy;

The Chairman of the Working Group on Enforced or Involuntary Disappearances, Mr. I. Tosevsky, who has informed the Government that he will send Mr. García Sayan and Mr. Nowak some time after March 1996. The Government hopes to set definite dates for this visit;

The Chairman of the Working Group on Arbitrary Detention, Mr. L. Joinet, who stated orally that he preferred not to make a visit, since he did not consider arbitrary detention to be a problem in Colombia and had visits scheduled to other countries.

In addition to these mechanisms, the Government considered it important to have the technical advisory services offered by the Centre. During his visit to Colombia, Mr. Ayala Lasso, the High Commissioner for Human Rights, agreed with President Samper that he would send a representative of the Centre to identify the aspects of the human rights problem on which Colombia requires advice.

The visit took place from 21 August to 4 September (the Government is still waiting for the proposal by the Technical Assistance Branch, which says that the list is not yet ready).

II. GOVERNMENT MEASURES AND ACHIEVEMENTS

Regional justice

The context in which "regional justice" ("justice without a face") is established is that of the threat to stability and the administration of justice posed by specialized crime which is organized along business lines and whose acts are increasingly difficult to monitor, investigate and punish. Organized crime promotes corruption and uses force, intimidation, selective violence and even terrorism.

In this context, "regional justice" corresponds to the responsibility of the judiciary to guarantee the security and integrity of all officials in its service. Some 300 staff members of the judicial branch consider themselves to be at risk.

Despite the fact that the Government justifies the need for the institution of regional justice, it still intends to carry out a critical review to improve the institution and it has proposed to the Advisory Services of the Centre for Human Rights to do so.

It should be made clear that regional officials and the procedure applicable in the cases they hear do not constitute a special court. Initially, the mechanism did not allow cross-examination and access to the files by the person on trial and it limited annulment proceedings. However, subsequent legislative developments have guaranteed the rights of the defence, cross-examination and, in general, all the freedoms provided for in a State subject to the rule of law. These changes make it possible to keep the system of regional justice in force.

According to the draft statute law:

1. The identity of witnesses will be kept confidential only as decided by the judge hearing the case, subject to a ruling by the Prosecution Service.

2. The reasons for confidentiality will be based on an assessment of the offender's personality and on the nature of the punishable offence.

3. Witnesses whose identity is kept confidential may not be members of the police force or State security services.

4. The identity of prosecutors in regional courts will be public, except when the Attorney-General rules in a specific case that it should be confidential.

5. Within no less than one year of the entry into force of the statute law, the Attorney-General must decide in which ongoing cases the identity of the prosecutor and witnesses will continue to be confidential.

Apart from a few clearly defined and regulated exceptions, regional judicial officials apply the procedural provisions relating to all the offences referred to in the Code of Criminal Procedure.

Rules establishing exceptions are submitted to a constitutionality review by the highest court, the Constitutional Court, which declares any rules not in keeping with the Constitution unacceptable.

Compensation

A bill which has been submitted to Congress for its consideration will enable the Government to pay compensation ordered by the Inter-American Commission on Human Rights and the Human Rights Committee (International Covenant on Civil and Political Rights) for human rights violations. The bill as a whole was adopted on first reading in the Senate plenary last 1 November.

The Ministry of Defence has earmarked US$ 25 million to pay compensation owed as a result of misconduct in the line of duty in 1995; $20 million are intended for compensation payments for human rights violations.

Impunity

With the support of the Government, the Attorney-General's Office has established the National Unit of Human Rights Prosecutors' Offices, which is composed of elite officials and is responsible for promptly and reliably conducting investigations into the most serious unsolved cases of human rights violations.

By Presidential Decree, the Government established a commission to prepare draft amendments to the Military Penal Code to bring it into line with the provisions of the 1991 Constitution. The Commission submitted its report to the Government last October. It was composed of high-level officials of State investigation and monitoring bodies (Prosecutor's, Attorney-General's and Ombudsman's Offices), governmental agencies, senior police and army officers and the Director of the Andean Commission of Jurists.

As a result, a consensus was reached on:

Making command functions totally separate from investigation and prosecution functions;

Establishing the adversary system. To this end, the Special Law Enforcement Prosecutor's Office was set up to rule on the merits of investigations, formulate charges and provide broad support for investigations and sentencing;

Ensuring that the Prosecution Service takes part in proceedings at all times through the Prosecutor General's Office.

No consensus was reached on whether or not the concepts of "acts committed in the line of duty" and "due obedience" should be defined as grounds for exemption from responsibility.

The Government is reviewing these draft amendments so that they may be submitted to Congress during the legislative period starting in March 1996. The President's statements indicate that he is in favour of interpreting "due obedience" in accordance with the 1991 Constitution, which provides that the

right not to be subjected to enforced disappearance is an inalienable right that cannot be infringed by an abuse of power. Consequently, this offence is not within the jurisdiction of military justice and is not covered by the exemption of "due obedience". This was also the Constitutional Court's interpretation in last December's ruling relating to the obligation of subordinates to disobey any order that is a violation of human rights and stating that both those who issue such an order and those who execute it are responsible.

In order to expand regional experience of the in-depth analysis of the wide range of elements influencing rates of violence and violations of human rights and international humanitarian law and in order to encourage the competent authorities to rule promptly and fully on the cases reported, the Diagnosis and Follow-up Commission was established in El Meta province on 31 August 1995. It is composed of State, non-governmental and governmental bodies and, at the Colombian Government's request, the Ambassador of the Federal Republic of Germany takes part as an observer. It will submit a report on the progress of its work.

With regard to cases pending as a result of incidents that occurred earlier, the Government has agreed to try to reach an amicable settlement. In three cases of human rights violations being dealt with by the Inter-American Commission on Human Rights following the incidents that occurred in Villatina (1992), Caloto (1991) and Uvos (1991), an agreement was reached on 7 September by NGO petitioners in the Inter-American Commission on Human Rights, the Inter-American Commission on Human Rights itself and the Presidential Advisory Board on Human Rights setting up a "committee to promote the administration of justice" to make criminal and disciplinary action in these three cases smoother, more dynamic and efficient.

Protective measures

With the support of the Netherlands, a computerized communications network has been set up for data exchanges between State, governmental and non-governmental human rights bodies for the collection and transmission throughout the country of reports and information on human rights violations. The bodies responsible for investigating and trying such cases will thus be able to take urgent measures to protect the persons affected and systematically follow up the relevant proceedings.

Under Act No. 199 of July 1995, the "Ministerio de Gobierno" became the "Ministerio del Interior" (Ministry of the Interior) and was assigned the task of coordinating all activities of Executive bodies responsible for the protection and defence of human rights. Priority is being given to the programme for persons displaced as a result of violence and the protection of persons at risk, such leaders and members of human rights groups, political groups and social organizations, as well as persons who have witnessed serious violations.

Paramilitarism

It should be made clear that the so-called "paramilitary groups" in Colombia are self-defence groups that were set up as a result of drug trafficking and guerrilla threats. Although some of these groups may be linked to sectors of the armed forces, they are not in any case support forces for the latter and their organizations are prohibited by law.

Important developments in attempts to track down and arrest some of their members include:

The arrest of 21 members of "La Escopeta" group accused of having killed over 150 persons in Antioquia;

The arrest of 11 alleged members of paramilitary groups in La Rochela (Barrancabermeja municipality);

The arrest of the alleged leader of a group that is active in El Meta province;

The arrest of 13 members of paramilitary groups accused of one of the worst massacres in Urabá;

The arrest of 20 persons accused of alleged violations in the town of Armenia (Antioquia), including the mayor, the inspector, the police chief and a former senator (both the mayor and the senator were popularly elected, and this shows how various sectors of society take part in these groups).

Internally displaced persons

The Act establishing the Ministry of the Interior assigned the section dealing with natural disasters responsibility for also dealing with persons displaced by violence during the emergency humanitarian assistance phase.

The programme for displaced persons relates to prevention, protection, humanitarian assistance, medium-term social welfare programmes ("Social Solidarity Network") and land distribution.

The Ministry of the Interior and the Presidential Advisory Board on Human Rights have also requested cooperation from IOM, which has had experience in this regard in other parts of Latin America.

In September-October 1995, three Government officials spent 10 days in Guatemala finding out about the assistance which IOM gave that country.

Declaration of a state of internal disturbance

States of emergency are provided for in the Colombian Constitution, which gives the Executive special powers in response to emergency situations or circumstances.

The use of states of emergency involves judicial and political monitoring by the Constitutional Court and Congress, respectively. The Constitution specifically prohibits the suspension of human rights and fundamental freedoms during a state of internal disturbance and establishes the obligation to respect international humanitarian law. States of emergency may not be decreed for more than 90 days, which may be extended for two periods of time, the second of which requires approval by the Senate.

The grounds for the declaration of a state of internal disturbance were:

The breakdown of law and order as a result of ordinary crime, organized crime and subversion;

Acts of indiscriminate violence by subversive groups without regard for the civilian population; and

Systematic massacres in various parts of the country by organized crime.

The measures adopted include:

Those relating to the imposition of sentences proportionate to the loss or injury caused to society with a view to the establishment of a category of penalties that harshly punishes the leaders of criminal organizations;

Those relating to the offences of escaping from prison and committing offences from inside prison;

Those establishing shortened oral court proceedings to try minor offences, based on full respect for due process and legal guarantees;

Those relating to public order, safety and coexistence in the Urabá region (establishment of the Concerned Citizen's Group).

Peace process

As a result of the approval of the extension of the Public Order Act (Act No. 104 of 1993), the Government is authorized to deal specifically with problems of violence. For example, with a view to the rehabilitation of armed groups, it is allowed to appoint two of its representatives to national and local legislative bodies. The Act also identifies particular ways of promoting dialogue and concluding agreements with guerrilla groups and provides for their military demobilization, reconciliation and peaceful coexistence.

III. RECOMMENDATIONS AND COMMENTS ON THE REPORTS OF THE RAPPORTEURS WHO HAVE VISITED COLOMBIA

1. Rapporteur on arbitrary executions, Mr. Amos Wako, January 1990. The following comments are in summary form; detailed comments are contained in annex 3 to this report.

Paragraphs 64, 66 and 67: "Paramilitary groups are the greatest source of violations to the right to life ... Far-reaching steps have to be taken to eliminate the prevailing climate of impunity".

Measures: see the section on paramilitarism above.

Paragraphs 68 to 71: "Administration of justice: a climate of genuine fear among judges and witnesses hampers the administration of justice. Proper investigations cannot be carried out and, therefore, many files are closed for lack of evidence".

Measures: see the chapter on regional justice above.

Additional measures include specific forms of protection for administrators of justice, such as armoured vehicles, escorts and general insurance protecting judicial officials in Colombia. A significant demonstration of the positive results of these measures is that, in the last two years, there has been a drop in the number of judicial officials who have died in the line of duty.

With regard to the improvement of criminal investigation mechanisms, particularly by the Judicial Police, the 1991 Constitution established the Attorney General's Office for the express purpose of investigating crimes as a specialized body. Its technical unit for criminal investigation operates directly in providing logistical and security support for investigators. The Attorney-General's Office later set up the National Unit of Human Rights Prosecutors' Offices, which is in charge of a number of offices specializing in the investigation of human rights violations.

The conditions of employment of judicial staff have been strengthened and improved, with salary increases of up to 37 per cent for high court judges, 44 per cent for members of panels of judges, 50 per cent for circuit judges and 132 per cent for municipal judges. From 1990 to 1994, the number of judicial posts increased from 26,352 to 40,536. The percentage of the national budget earmarked for the justice sector is at present 4.6, which is slightly lower than in Costa Rica (5.5 per cent) and higher than in Argentina and Chile.

Paragraph 72: Programme of action to promote social justice

Measures: One of the present Government's priorities is the reinstatement of a social policy. To this end, the Government has developed the "Social Solidarity Network", which promotes solidarity employment plans, food assistance, support for women heads of household, assistance for needy elderly persons and rural and urban housing programmes.

Paragraph 73: Campaign to promote human rights and respect for such rights, particularly in the activities of the armed forces and the police.

Measures: The 1991 Constitution makes human rights teaching compulsory in all official and private educational establishments. In accordance with

this requirement, major efforts have been undertaken to provide human rights training for members of the armed forces. Many human rights offices have also been set up in military garrisons and police stations throughout the country.

2. Report by the representative of the Secretary-General on internally displaced persons, Mr. Francis Deng, June 1993. The following comments are in summary form; detailed comments are contained in annex 3 to this report.

Paragraph 108: An agreement should be reached on a practical definition of what is meant by "displaced person".

Measures: This task was carried out by the seminar/workshop on "Comprehensive policies on internal displacement in Colombia" (11-13 June 1994), which was organized by State and non-governmental bodies.

Paragraph 113: The Government should regard interested NGOs as partners.

Measures: The Government's development plan, entitled "Social Advancement", includes an outline of comprehensive protection and assistance programmes to be based on community participation and the coordination of planning and execution by the Government, NGOs and international organizations.

Paragraph 114: Strengthening of protection for land and property rights, for the rules of humanitarian law prohibiting displacement, and for the right to life and physical integrity during and after displacements.

Measures: The Agrarian Reform Act (Act No. 160 of 1995) provides that displaced persons will benefit from the national system of agrarian reform, through loans and subsidies, if they wish to work on farms and do not have their own land.

Paragraph 130: International assistance must be provided and intensified.

Measures: The Government welcomes Mr. Deng's suggestion that it should accept offers of technical and financial assistance from international, governmental and non-governmental cooperation.

3. Joint report of the Special Rapporteurs on torture, Mr. N. Rodley and Mr. B. Ndiaye (17-26 October 1994, doc. E/CN.4/1995/111) (an additional document is contained in annex 4).

Annex 4, which contains the preliminary comments made by the Presidential Advisory Board on Human Rights, is attached herewith. The report and comments are being considered by the Government Commission which was set up under Decree No. 1290 and to which we referred in chapter I, paragraph 1, above.

At the seven meetings Commission 1290 has held so far, the discussion focused on the main recommendations made in the joint report:

Paramilitarism:

"Social cleansing" operations

Regional justice

States of emergency

Impunity

Military criminal justice

Human rights teaching.

Annex 4, which contains the records of the meetings of Commission 1290, describes the analysis of and decisions relating to these questions.

Annexes

Annex 1 Decree No. 1290 setting up the Government Commission to analyse and evaluate the recommendations made by the thematic rapporteurs.

Annex 2 Record of the first meeting of the Commission.

Annex 3 Comments on the recommendations made by the rapporteurs.

Annex 4 Records of the other meetings of Commission 1290.